

DOCKET**04-SIT-2**

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FINAL STATEMENT OF REASONS

California Energy Commission Rules of Practice and Procedure & Power Plant Site Certification Regulations

Docket # (04-SIT-2)**Amendments to
Title 20, Division 2 of the California Code of Regulations****(OAL Notice File Number Z-06-1214-01)****February 2007**

INTRODUCTION

The California Energy Commission ("the Energy Commission") proposes to amend the Rules of Practice and Procedure & Power Plant Site Certification Regulations implementing Section 25500, et seq. of the Public Resources Code. The Energy Commission was created by the Warren-Alquist State Energy Resources Conservation and Development Act (Pub. Resources Code section 25000, et seq.). The Act vests the Commission with a wide range of duties and responsibilities related to the development and conservation of energy resources in California, including a comprehensive siting process for thermal power plants 50 megawatts or greater, and related transmission lines, fuel supply lines, and related facilities (Public Resources Code section 25500, et seq.).

The Energy Commission published its Notice of Proposed Rulemaking on December 29, 2006, in the California Regulatory Notice Register. Two hearings were scheduled for January 17, 2007 and February 14, 2007, the latter was rescheduled to February 28, 2007, and no additional hearings were requested by any member of the public. The last day for written comment on the Notice of Proposed Rulemaking was February 12, 2007. Two written comments on the proposed rulemaking were received by the Energy Commission and were responded to on February 14, 2007. One submittal was a "No Comment," letter from Stanislaus County.

As previously stated within the Notice of Proposed Rulemaking, this Final Statement of Reasons is posted on the Energy Commission's website at

<http://www.energy.ca.gov/siting/rulemaking/documents/index.html>

The following is intended to meet the requirements of Section 11346.9 of the Government Code for a Final Statement of Reasons:

1. Update of Information Contained in the Initial Statement of Reasons

An update of information contained in the Initial Statement of Reasons is being made because the Energy Commission made three substantial and sufficiently related changes, due to comments on the proposed regulations. The Notice of Proposed Change was mailed February 13, 2007, to the parties required by Title 1, Section 44(a), of the California Code of Regulations, identifying the changes. The Notice of Proposed Change was sent to:

1. Those who submitted oral testimony at the public hearings.
2. Those who submitted written testimony at the public hearings.
3. Those who submitted written comments during the public comment period.
4. Those who specifically requested to be notified of any such changes.

The 15-Day Notice of Proposed Change comment period closed on February 27, 2007, with no comments received on the modified language. However, two comment letters were received addressing general policy.

2. Local Mandate Determination

Subdivision (a)(2) of section 11346.9 of the Government Code requires the final statement of reasons to include a determination as to whether the amendments in this action impose a mandate on local agencies or school districts.

The Energy Commission has determined that the proposed amendments to the Rules of Practice and Procedure & Power Plant Site Certification Regulations will not impose a mandate on local agencies or school districts. The proposed amendments to the Rules of Practice and Procedure & Power Plant Site Certification Regulations address the various data information sections that require updating because specific statutes have been either repealed and/or enacted. In addition, amendments have been proposed that would provide consistency with the Administrative Procedures Act, and help clarify the process for Commission staff, interested parties and the public. The amendments do not impose any affirmative mandate on local agencies or school districts.

3. Summaries and Responses to Comments

Subdivision (a)(3) of section 11346.9 of the Government Code requires a summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed. The Energy Commission received nine sets of written comments previous to, and four written comments during the proposed rulemaking. The letter received from Stanislaus County was a "No Comment," letter. The other three comment responses are shown below. In addition, the Energy Commission received oral comments at the January 17, 2007, hearing of the Siting Committee and at the Public Hearing conducted by the Energy Commission on February 28, 2007, those responses are also shown.

The text of the written comments received during the rulemaking and the summarized reply are below. The “No comment” letter from Stanislaus County did not require a response:

Comment Received: URS Corporation, R. Greene, February 9, 2007.

Mr. Greene suggests the following change in Appendix B of the Rules, subsection (g), (4) Noise, (A): substitute the words “ambient noise” for the word “background”. His rationale is that the change will make the text consistent with the words already used in the following subsection (g) (4) Noise (B); remove confusion between terms that have specific scientific meanings; and provide consistency with the term “ambient noise” as used in the California Environmental Quality Act (e.g., Appendix G. Section XI. Noise, (c) and (d)).

Commission Response:

Energy Commission staff disagrees with the comment and asserts that the existing language in paragraph (A) of the regulation is wholly consistent with that in paragraph (B), because the background noise level is an integral component of “...the ambient noise levels at those sites identified under subsection (g)(4)(A)...”. In addition, there is no confusion between terms that have specific scientific meanings. The background noise level is a significant subset of the ambient noise regime, not a contradictory concept. Furthermore, the language in the regulation is wholly consistent with CEQA. CEQA requires consideration of “a substantial permanent increase in ambient noise levels...above levels existing without the project...” (Appendix G, Section XI(c)) CEQA also requires analysis of “a substantial temporary or periodic increase in ambient noise levels...above levels existing without the project...” (Appendix G, Section XI(d)) As explained above, the background noise level is an integral component of the ambient noise environment specified in these sections.

Comment Received: Sempra Energy, Taylor Miller, February 26, 2007.

The Staff responses to comments and the discussion at the workshops have been limited to responses to changes originally proposed by Staff. Sempra’s previous comments (October 16, 2006) touched upon a number of other matters that were not explicitly addressed. These issues include: developing stream-lined procedures for peaking power projects; giving staff authority to reduce information requirements similar to the six-month siting process; giving more deference to water and air agencies in regards to methodologies and adequacy of mitigation; coordination with local agencies on required land use changes and permits required, coordination with federal agencies on permits required and timing of federal approval; and limiting the scope of testimony; and mandating pre-filing testimony. In addition, Sempra suggested the Energy Commission should clarify its authority to enforce conditions of exemption in its Small Power Plant Exemption proceeding. Finally, Sempra suggested that the Energy Commission state explicitly whether a project with back-up fuel is included in the definition of “solar thermal power plant.”

Commission Response:

The Energy Commission acknowledges the general policy-related comments submitted by Sempra Energy prior to the start of the formal rulemaking proceeding. The general comments however, do not address the specific focus of the rulemaking. The specific comments submitted by Sempra Energy and related to the rulemaking topics were addressed in the November 3, 2006, Staff Response to Comments.

Comment Received: City of Huntington Park, February 27, 2007

The City urges the California Energy Commission to further limit or restrict Electric Generating Facilities (EGFs) from establishing in heavily polluted areas, such as the City of Huntington Park. The City strongly urges that the Energy Commission preclude the permitting of EGFs in any area where the area of impact would be defined as a non-attainment area and urges that operators of EGFs proposing to locate in non-attainment areas be limited to acquiring ERCs only available within the area of potential impact and within a three (3) mile radius of the project site.

Commission Response:

The City of Huntington Park has requested policy changes that are not in the scope of the rulemaking proceeding. The comments were received after the 45-Day Comment period nor do they address the topics of the Notice of Proposed Change, 15-Day Language comment period.

Comments received during the January 17, 2007, Siting Committee Rulemaking Public Hearing and Energy Commission responses are summarized below:

Comment Received: From Marc Joseph, Californian Unions for Reliable Energy.

Mr. Joseph requested that the definition of “presiding officer” be included in section 1216, Ex Parte Contacts.

Commission Response:

The language in Section 1216, Ex Parte Contacts was changed to read: “For the purposes of this section, “presiding officer” means all commissioners and all hearing advisors.

Comment Received: Jeffrey Harris, Ellison & Schneider and Harris, LLP on behalf of Calpine Corporation and LS Power.

Section 1751 should be modified to change “hearing record” to “evidentiary record.”

Commission Response:

No changes are being proposed. The term “hearing record” was the term requested to be used by the Secretary of Resources as part of the Energy Commission’s certification as a regulatory program under the California Environmental Quality Act.

Comment Received: Taylor Miller, on behalf of Sempra Energy.

Changes should be made to the requirements in the Water Resources section of Appendix B to be consistent with changes in the biological resources requirements.

Commission Response:

The phrase “if applicable” was used in the Water Resources section making any further changes unnecessary.

Comments Received: Various parties representing applicants in the siting process.

Some applicants in the siting process were disappointed that the changes made to Appendix B require more information from the applicants to be submitted earlier in the process.

Commission Response:

Applications for siting cases have grown over the years, yet staff resources have not. Shifting information gathering to earlier in the process is likely to make the siting process considerably more efficient and thus, save costs.

The Energy Commission received no comments related to the procedures it followed in proposing or adopting the rulemaking action. All timely written comments were formally responded to in writing on either November 3, 2006 or February 14, 2007. Oral comments during the Public Hearings were addressed at that time, or if appropriate, included in the Notice of Proposed Change. The two comments received from the City of Huntington Park and Sempra Energy were summarized during the February 28, 2007, public hearing and responses are included in this Final Statement of Reasons.

4. Consideration of Alternatives

Subdivision (a)(4) of section 11346.9 of the Government Code requires the Final Statement of Reasons to include a determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation. Subdivision (a)(5) of section 11346.9 of the Government Code requires the Final Statement of Reasons to include an explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses.

As stated in the foregoing, the Energy Commission received a total of ten written comments on the proposed rulemaking with alternative regulatory language. Some of the proposed alternatives were included in the Response to Comments published November 3, 2006, and were subsequently included in the proposed regulations published in the Notice of Proposed Rulemaking on December 29, 2006. The final written comment received on February 9, 2007, was not considered a viable alternative. It was addressed in the Second Response to Comments published February 14, 2007.

Before adopting the proposed regulations, the Energy Commission determined that no alternative considered by it would be as effective in carrying out the purpose for which the action is proposed, or would be as effective as, and less burdensome than, the proposed action. The Energy Commission's purpose in considering this proposal is to clarify and update its regulations governing the conduct of its proceedings and data requirements in its power plant siting process. The Energy Commission is not aware of any reasonable alternatives to the proposed regulations that would be more effective, including no-action, and/or less burdensome to the objectives of the proposed regulations.

The Energy Commission filed an Economic and Fiscal Impact Statement (STD 399) with the California Department of Finance that was approved on September 26, 2006, showing no impact on small businesses.

5. Location of Rulemaking File

A copy of the rulemaking file is available for public inspection at:

California Energy Commission
Docket Unit
1516 Ninth Street - M.S. 4
Sacramento, CA 95814
Contact: James W. Reede, Jr., Ed.D, (916) 653-1245